

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

JUSTIN JADE COLLINS,

Plaintiff,

v.

CASE NO. 17-3189-SAC

JOE NORWOOD, et al.,

Defendants.

MEMORANDUM AND ORDER

Plaintiff, a state prisoner appearing pro se and in forma pauperis, filed this civil rights complaint pursuant to 42 U.S.C. § 1983. Mr. Collins is an inmate at Lansing Correctional Facility in Lansing, Kansas (“LCF”). He alleges that his Eighth Amendment rights are being violated primarily by Defendants’ failure to protect him. Plaintiff names as defendants: Joe Norwood, Director of the Kansas Department of Corrections (“KDOC”); Sam Cline, Warden of LCF; Melissa Waldock, LCF Classification Administrator; Colette Winkelbauer, LCF Deputy Warden; Doug Burris, KDOC Corrections Manager; and Andrew Lucht, former EAI Major.

According to Plaintiff, he agreed to serve as a confidential source in a wide-spread corruption investigation at LCF. He signed two (2) confidential source agreements, one in 2015 and one in 2016, with EAI officials and provided information that assisted in the investigation. Then, his identity as a confidential informant was leaked by an unidentified KDOC employee to security threat groups (“STGs”) implicated in the corruption investigation and was revealed in a

LCF employee's civil service appeal of administrative action taken based on the investigation. Mr. Collins has been labeled a "snitch" and has been "green lighted" for attack by the STGs. He is being held in segregation for protective purposes. Mr. Collins alleges he is not safe in long term protective custody and furthermore should not be required to spend the remainder of his confinement (approximately three more years) in segregation. Plaintiff has repeatedly requested transfer to an out of state prison pursuant to interstate compact, but he has not received a response to his requests.

Mr. Collins alleges violation of his Eighth Amendment right to be free from cruel and unusual punishment. He seeks injunctive relief in the form of an order directing his transfer to an out of state prison, as well as compensatory and punitive damages.

Plaintiff has also requested appointment of counsel. *See* Doc. #3. There is no constitutional right to appointment of counsel in a civil case. *Durre v. Dempsey*, 869 F.2d 543, 547 (10th Cir. 1989); *Carper v. DeLand*, 54 F.3d 613, 616 (10th Cir. 1995). The decision whether to appoint counsel in a civil matter lies in the discretion of the district court. *Williams v. Meese*, 926 F.2d 994, 996 (10th Cir. 1991). "The burden is on the applicant to convince the court that there is sufficient merit to his claim to warrant the appointment of counsel." *Steffey v. Orman*, 461 F.3d 1218, 1223 (10th Cir. 2006) (quoting *Hill v. SmithKline Beecham Corp.*, 393 F.3d 1111, 1115 (10th Cir. 2004)). It is not enough "that having counsel appointed would have assisted [the prisoner] in presenting his strongest possible case, [as] the same could be said in any case." *Steffey*, 461 F.3d at 1223 (quoting *Rucks v. Boergermann*, 57 F.3d 978, 979 (10th Cir. 1995)).

In deciding whether to appoint counsel, courts must evaluate "the merits of a prisoner's claims, the nature and complexity of the factual and legal issues, and the prisoner's ability to

investigate the facts and present his claims.” *Hill*, 393 F.3d at 1115 (citing *Rucks*, 57 F.3d at 979). The Court concludes in this case that (1) it is not clear at this juncture that Plaintiff has asserted a colorable claim against a named defendant; (2) the issues are not complex; and (3) Plaintiff appears capable of adequately presenting facts and arguments. The Court denies the motion without prejudice to refiling the motion if Plaintiff’s Complaint survives screening.

The Court finds that the proper processing of Plaintiff’s claims cannot be achieved without additional information from appropriate officials of the Lansing Correctional Facility. *See Martinez v. Aaron*, 570 F.2d 317 (10th Cir. 1978); *see also Hall v. Bellmon*, 935 F.2d 1106 (10th Cir. 1991). Accordingly, the Court orders the appropriate officials of LCF to prepare and file a *Martinez* report. Once the report and Defendants’ answers have been received, the Court can properly screen Plaintiff’s claims under 28 U.S.C. § 1915.

IT IS THEREFORE ORDERED that Plaintiff’s motion for appointment of counsel (Doc. #3) is **denied without prejudice**.

IT IS FURTHER ORDERED:

(1) The Clerk of the Court shall prepare waiver of service forms for the defendants, pursuant to Rule 4(d) of the Federal Rules of Civil Procedure, to be served at no cost to Plaintiff absent a finding by the Court that Plaintiff is able to pay such costs.

(2) The report required herein shall be filed no later than **sixty (60) days** from the date of this order, and Defendants’ answers shall be filed within **twenty (20) days** following receipt of that report by counsel for Defendants or as set forth in the waiver of service, whichever is later.

(3) Officials responsible for the operation of the Lansing Correctional Facility are directed to undertake a review of the subject matter of the complaint:

- a. To ascertain the facts and circumstances;
- b. To consider whether any action can and should be taken by the institution to resolve the subject matter of the complaint; and
- c. To determine whether other like complaints, whether pending in this Court or elsewhere, are related to this complaint and should be considered together.

(4) Upon completion of the review, a written report shall be compiled which shall be attached to and filed with the defendants' answers or responses to the complaint. Statements of all witnesses shall be in affidavit form. Copies of pertinent rules, regulations, official documents, and, wherever appropriate, the reports of medical or psychiatric examinations shall be included in the written report. Any recordings related to Plaintiff's claims shall also be included.

(5) Authorization is granted to the officials of the Lansing Correctional Facility to interview all witnesses having knowledge of the facts, including the plaintiff.

(6) No answer or motion addressed to the complaint shall be filed until the *Martinez* report required herein has been prepared.

(7) Discovery by Plaintiff shall not commence until Plaintiff has received and reviewed Defendants' answers or responses to the complaint and the report ordered herein. This action is exempted from the requirements imposed under Fed. R. Civ. P. 26(a) and 26(f).

IT IS FURTHER ORDERED that the clerk of court shall enter the Kansas Department of Corrections as an interested party on the docket for the limited purpose of preparing the *Martinez* Report ordered herein. Upon the filing of that report, KDOC may move for termination from this action.

Copies of this order shall be transmitted to Plaintiff, to Defendants, and to the Attorney General for the State of Kansas.

IT IS SO ORDERED.

DATED: This 7th day of November, 2017, at Topeka, Kansas.

s/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge